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LETTER DATED 18 JANUARY 1992 FROM THE PERMANENT REPRESENTATIVE OF THE LIBYAN ARAB JAMAHIRIYA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to transmit to you herewith the text of a letter from the Secretary of the People's Committee for Foreign Liaison and International Cooperation addressed to His Excellency Mr. James A. Baker III, Secretary of State of the United States of America, and His Excellency Mr. Douglas Hurd, Minister for Foreign Affairs of the United Kingdom of Great Britain and Northern Ireland, through the embassies of Belgium and Italy, which are entrusted with the interests of the two countries in the Jamahiriya.

In the letter, the Jamahiriya calls for the implementation of article 14 of the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation.

I should be grateful if you would have the present letter and its annex circulated as a document of the Security Council.

(Signed) Ali Ahmed ELHOUDEIRI
Permanent Representative

Annex

I refer to the disintegration of Pan Am flight 103 over the village of Lockerbie in southern Scotland on 21 December 1988. After two years of investigation, the United States of America and the United Kingdom began to make random accusations against individuals, organizations and States and, when nearly three years had elapsed, the same countries directed the self-same charges against two Libyan nationals on the basis of the same investigation.

The United States of America, the United Kingdom and Libya are States parties to the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. Accordingly, out of respect for the principle of the ascendancy of the rule of law and in implementation of the Libyan Code of Criminal Procedure promulgated in 1953, which fixes the jurisdiction of Libyan national law, as soon as the charges were made, Libya immediately exercised its jurisdiction over the two alleged offenders in accordance with its obligation under article 5, paragraph 2, of the Montreal Convention by adopting certain measures to ascertain their presence and taking immediate steps to institute a preliminary inquiry. It notified the States mentioned in article 5, paragraph 1, of the Convention that the suspects were in custody.

It is incontestable that the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation does not exclude any criminal jurisdiction exercised in accordance with national law (in the present case Libyan law), as stated in article 5, paragraph 3. As a State party to the Convention and in accordance with paragraph 2 of the same article, we took such measures as might be necessary to establish our jurisdiction over any of the offences mentioned in article 1, paragraph 1 (a), (b) and (c) and article 1, paragraph 2, because the alleged offender in the case was present in our territory.

Moreover, article 7 of the Convention stipulates that the Contracting Party in the territory of which the alleged offender is found shall, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution and that those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

The case was, indeed, submitted to the judicial authorities, and an examining magistrate was appointed (a Counsellor of the Supreme Court). He instituted judicial procedures to ascertain the presence of the two suspects, initiated a preliminary inquiry and issued an order for the two suspects to be taken into custody, on a tentative basis. The States mentioned in article 5, paragraph 1, of the Convention were notified accordingly and were requested to cooperate with the Libyan judicial authorities. The Libyan judicial authorities appointed to conduct the inquiry made the same request in official communications addressed to the following:

The Attorney General of the United States of America;

The Foreman of the Grand Jury in the District of Columbia, United States of America;

The French examining magistrate.

As of the present moment, however, there has been no response to any of these requests.

In taking these measures, Libya has given practical expression to its deep sorrow at the tragic and criminal destruction of the aircraft, and it has on more than one occasion expressed its respect for the principle of the ascendancy of the rule of law.

After calling on the other parties concerned to cooperate, and while expecting the cooperation requested to be fully forthcoming, Libya has received from the United States of America and the United Kingdom not only the outright refusal of such cooperation but even the threat of the use of force and an aggregate reaction that has made any negotiated settlement impossible.

It is to be noted that article 14, paragraph 1, of the Convention stipulates that any dispute between two or more contracting States which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration.

Article 33, paragraph 1, of Chapter VI of the United Nations Charter, entitled "Pacific settlement of disputes", stipulates that the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall seek a solution by negotiation, enquiry, mediation, conciliation, arbitration or judicial settlement.

Libya urges the United States of America and the United Kingdom to be governed by the voice of reason and law, to give their prompt agreement to arbitration in accordance with article 14, paragraph 1, of the Convention and to sit down with us as soon as possible in order to elaborate details in order to assist in the preparation of the dispute for arbitration.

Libya affirms its unqualified condemnation of terrorism in all its forms, it censures any participation in a crime of this type, and it specifically denies any association with, knowledge of or consent to the acts which led to the crash of the Pan Am aircraft.

Libya will be happy to exert the utmost efforts for the elimination of all forms of terrorism. I hope that the proposals we have made will meet with your agreement.

Ibrahim M. BISHARI
Secretary of the People's Committee
for Foreign Liaison and
International Cooperation